IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.677 of 2006

Kala ... Petitioner

vs.

1. The Secretary to the Government,
Prohibition and Excise Department,
Secretariat,
Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai. ... Respondents

For Petitioner : Mr.V. Parthiban

For Respondents : Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor.

Petition under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent, dated 29.06.2006, No.163/BDFGISV/2006, against the petitioner's husband by name Raja, son of Balakrishnan, aged about 35 years, who is confined at Central Prison, Chennai, set aside the same and direct the respondents to produce the detenu before Court and set him at liberty.

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

. . . . .

The petitioner herein challenges the impugned order of detention, detaining her husband by name Raja as 'Bootlegger' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Heard learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, by drawing our attention to the Arrest Memo, which is available at page No.86 of the Booklet, submitted that though the detenu was arrested by the Inspector of Police at 4.45 P.M. on 20.06.2006, taken to the Police Station at 6.30 P.M. and thereafter a case registered against him under various provisions of the Prohibition Act; inasmuch as the Arrest Memo contains Crime Number viz., PEW/FB.Cr.No.114 of 2006, and in the absence of proper explanation therefor by the authority concerned; the detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority. While elaborating the said submission, learned counsel has brought to our notice the specific reference made to the Crime Number in Column-2 of the Arrest Memo, which is available at Page No.86 of the Booklet.

4. As rightly pointed out, Column-6 itself makes it clear that the detenu/accused was arrested at 16:45 hrs. on 20.06.2006. In column-2 of the said Arrest Memo, there is a specific reference to Crime Number, viz., PEW/FB.Cr.No.114/06. It is brought to our notice that even in the special report of the Sponsoring Authority, which is available at page No.97 of the Booklet, the above factual aspect has been reiterated once again. When the detenu/accused was arrested at 4.45 PM., recovery of contraband was made at 5.45 P.M., the detenu was taken to the Police Station at 6.30 P.M. and only thereafter, case has been registered under various Sections of the Prohibition Act, it is not clear as to how the Sponsoring Authority has mentioned the Crime Number in the Arrest Memo particularly when arrest was effected at 16.45 Hrs. We have already referred to the factual details mentioned in the Special Report. There is no explanation from anyone as to how the Crime Number came to be noted in the Arrest Memo well prior to the registration of the crime. In the absence of explanation by the person concerned, as rightly

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pointed out by the learned counsel for the petitioner, the impugned order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government, Prohibition and Excise Department, Fort St. George, Chennai 600 009.
2. The Commissioner of Police, Greater Chennai.
3. The Superintendent, Central Prison, Chennai. (In duplicate for communication to detenu)
4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.
5. The Public Prosecutor, High Court, Madras.

PV(CO)
SR/27.9.2006 HCP. No.677 of 2006

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